UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

My Pillow, Inc.,
a Minnesota corporation,

Plaintiff,

v.

JS Fiber Co., Inc.,
a North Carolina Company

and

Jammin' Butter, LLC
a Tennessee Limited Liability Company.

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

_______________________________________/

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Attorney for Plaintiff My Pillow, Inc.

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COMPLAINT

NOW COMES Plaintiff, My Pillow, Inc., by and through its undersigned attorney, and for its Complaint against Defendants JS Fiber Co, Inc. and Jammin' Butter, LLC states as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. On information and belief, Defendants are subject to personal jurisdiction in the Eastern District of Michigan (the "District"), consistent with the principles of due process and the Michigan Long Arm Statute, because Defendants offer their products for sale in this District, have transacted business in this District, have committed and/or induced acts of patent infringement in this District, and/or have placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b).

PARTIES

5. Plaintiff My Pillow, Inc. ("My Pillow") is a Minnesota corporation having a principal place of business at 343 East 82nd Street, Suite 100, Chaska, MN 55318.

6. Defendant JS Fiber Co., Inc. (JS Fiber) is, upon information and belief, a North Carolina corporation having a principal place of business at 290 Marble Road, Statesville, NC 28625.

7. Defendant Jammin' Butter, LLC (Jammin' Butter) is, upon information and belief, a Tennessee limited liability company having a principal place of business at 168 Roweland Drive, Johnson City, TN 37601

BACKGROUND

8. My Pillow is the owner of all right, title, and interest in United States Patent 7,461,424 (the My Pillow Patent), which Defendants are infringing and/or inducing others to infringe by making, using, offering to sell and/or selling in the United States.

9. My Pillow advertises its pillows in, *inter alia*, television commercials and infomercials. In both of these formats, My Pillow identifies its pillow as a patented product. In some of these formats, a general explanation of the patent technology is given.

10. Claim 1 of the My Pillow Patent claims:

> a case; and
>
> a plurality of polyurethane foam pieces disposed in the case, the plurality including a first plurality of foam pieces of a first average size, a second plurality of foam pieces of a second average size, and a third plurality of foam pieces of a third average size, with the first, second, and third average sizes being different, and with the first, second, and third pluralities of foam pieces disposed in the case in a mix, with the first plurality of foam pieces representing approximately 20 to 30 percent of the plurality of polyurethane foam pieces, and with the second plurality of foam pieces and the third plurality foam pieces constituting the remaining foam disposed in the case, in an approximately equal proportion by volume;
>
> wherein the plurality of a polyurethane foam pieces has a density of from about 1.8 pounds per cubic foot to about 1.9 pounds per cubic foot, and an indent force deflection at 25% of from about 27 to about 35.

11. The case and the three plurality of foams are represented in the four patent drawings below:

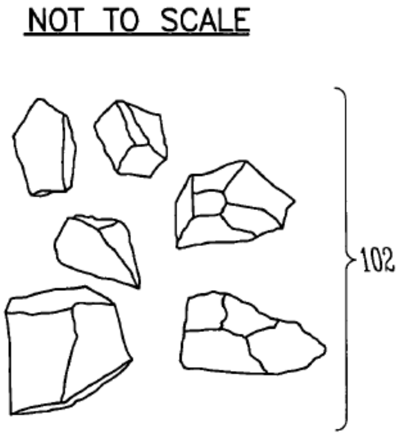

Fig.1

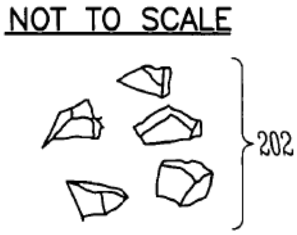

Fig.2

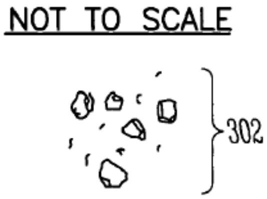

Fig.3

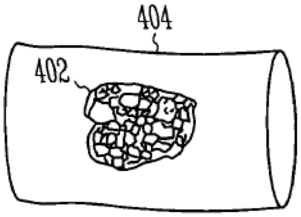

Fig.4

12. Jammin' Butter offers for sale and sells pillows by advertising over the Internet. On the web page, it states "[t]hese pillows can be compared to the "My Pillow" brand and conform to your head creating and [sic] exact, custom fit that will support and cradle your head like no pillow you've ever owned!" In a video on a website owned by Jammin' Butter, it is stated that the pillow has the "exact same filling as that one you see on TV … all the same aspects of that pillow…."

13. On information and belief, the pillows offered by Jammin' Butter include a case and have three differently sized pluralities of foam pieces, with the first plurality of

foam pieces representing approximately 20 to 30 percent of the foam inside the case. A photograph of the foam pieces found in the Jammin' Butter pillow shoes the three differently sized pluralities of foam pieces.

14. On information and belief, the foam pieces in the pillows offered by Jammin' Butter have a density of from about 1.8 pounds per cubic foot to about pounds per cubic foot, and an indent force deflection at 25% of from about 27 to about 35.

15. On information and belief, the pillow offered by Jammin' Butter comes with a law tag identifying JS Fiber as the manufacturer of the pillow. The pillow comes in packaging identical to a pillow offered for sale by JS Fiber through its product catalog.

16. Defendants have profited through infringement of the My Pillow Patent. As a results of Defendants' unlawful infringement of the My Pillow Patent, My Pillow has suffered and will continue to suffer damage. My Pillow is entitled to recover from Defendants the damages suffered by My Pillow as a result of Defendants' unlawful acts.

17. On information and belief, Defendants' infringement of the My Pillow Patent is willful and deliberate, entitling My Pillow to enhanced damages and reasonable attorney's fees and costs.

18. On information and belief, Defendants intend to continue their unlawful infringing activity, and My Pillow continues to and will continue to suffer irreparable harm— for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendants are enjoined by this Court.

COUNT I

INFRINGEMENT OF THE MY PILLOW PATENT BY JS FIBER

19. My Pillow realleges by reference the allegations contained in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

20. My Pillow is the owner of all right, title, and interest in the My Pillow Patent, entitled "Method and Apparatus for a Pillow Including Foam Pieces of Various Sizes," duly and properly issued by the United States Patent and Trademark Office on December 9, 2008. A copy of the patent is attached as Exhibit 1.

21. JS Fiber has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the My Pillow Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 1 through 8 of the My Pillow Patent, including, by way of example and not limitation, the pillow shown in the JS Fiber catalog.

COUNT II

INFRINGEMENT OF THE MY PILLOW PATENT BY JAMMIN' BUTTER

22. My Pillow realleges by reference the allegations contained in paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Jammin' Butter has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the My Pillow Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by at least claims 1 through 8 of the My Pillow Patent, including, by way of example and not limitation, the pillow shown on the Jammin' Butter website.

DEMAND FOR JURY TRIAL

24. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, My Pillow hereby demands a trial by jury on all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff My Pillow respectfully requests that this Honorable Court:

A. For a judgment declaring that Defendants have infringed at least each of claims 1 through 8 the My Pillow Patent;

B. For a judgment awarding My Pillow compensatory damages as a result of Defendants' infringement of the My Pillow Patent, together with interest and costs, and in no event less than a reasonable royalty;

C. For a judgment declaring that Defendants' infringement of the My Pillow Patent has been willful and deliberate;

D. For a judgment awarding My Pillow treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of the My Pillow Patent;

E. For a judgment declaring that this case is exceptional and awarding My Pillow its expenses, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;

F. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of infringement; and

G. Grant My Pillow such and other further relief that the Court deems just and equitable.

Respectfully Submitted,

by s/David J. Simonelli

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